

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD
CRIMINAL MISC.APPLICATION No. 2354 of 2007

For Approval and Signature:

HONOURABLE MR.JUSTICE M.R. SHAH

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1 Whether Reporters of Local Papers may be allowed
to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy
of the judgment ?

4 Whether this case involves a substantial question
of law as to the interpretation of the
constitution of India, 1950 or any order made
thereunder ?

5 Whether it is to be circulated to the civil judge
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NALINI MAHESH LANKHAPATHI - Applicant(s)

Versus

STATE OF GUJARAT & 1 - Respondent(s)

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Appearance :

MR RR MARSHALL for Applicant(s) : 1,
PUBLIC PROSECUTOR for Respondent(s) : 1,
MR MB GOHIL for Respondent(s) : 2,

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CORAM : HONOURABLE MR.JUSTICE M.R. SHAH

Date : 26/06/2007

ORAL JUDGMENT

Rule. Shri MB Gohil, learned advocate waives service of rule on behalf of respondent No.2. Shri Kodekar, learned APP waives service of rule on behalf of respondent No.1, - State.

2. By way of this application under section 482 of Criminal Procedure Code, the petitioner has prayed for an appropriate order to quash the complaint being Private Complaint No.1186/03 pending before the Court of ld. Chief Judicial Magistrate, First Class, Surat qua the petitioner.

3. A criminal complaint came to be filed by the respondent No.2 herein in the Court of ld. Chief Judicial Magistrate, First Class, Surat being Criminal Case No.1186 of 2003 against the petitioner and her husband for the offence punishable under section 138 read with section 141 of the Negotiable Instrument Act. It is the contention on behalf of the petitioner that the cheque in question on the basis of which the aforesaid criminal complaint has been filed is admittedly not signed by the petitioner and was signed by one Shri MB Lankapati and as the petitioner is neither the signatory of the said cheque nor the petitioner has issued the said cheque and that there are no allegation against the petitioner in the complaint, the complaint against the petitioner is required to be quashed and set aside.

4. Shri Gohil, learned advocate appearing on behalf of the respondent No.2 is not in a position to satisfy the Court how the petitioner is liable to be prosecuted under section 138 read with section 141 of the Negotiable Instrument Act. Admittedly, the cheque in question on the basis of which the impugned

complaint has been filed is signed by one Shri MB Lankapati and not the petitioner. When the petitioner is neither signatory of the said cheque nor the petitioner has issued the said cheque and that there are no allegation against the petitioner in the complaint that the petitioner has issued the aforesaid cheque, the petitioner is not required to be prosecuted for the offence punishable under section 138 read with section 141 of the Negotiable Instrument Act. Under the circumstances, the impugned complaint against the petitioner requires to be quashed and set aside.

5. For the reasons stated above, the application is allowed. Criminal complaint being Private Complaint No.1186/03 pending before the Court of ld. Chief Judicial Magistrate, First Class, Surat qua the petitioner is hereby quashed and set aside. Rule made absolute. Ad interim relief granted earlier stands vacated forthwith.

(M.R. Shah, J.)

shekhar/-